

Remarks

By the foregoing Amendment, claim 1 was amended, and new claims 12-14 are added. Entry of the Amendment, and favorable consideration thereof is earnestly requested.

The Examiner has rejected all the claims under 35 U.S.C. §103 as unpatentable over either Japanese Patent Document No. JP 55-81317 to Shimonaka ("the '81317 reference") or U.S. Patent No. 5,329,940 to Adair ("the '940 patent") in view of U.S. Patent No. 5,921,917 to Barthel et al. ("the '917 patent").

As amended, all the claims of the present invention require, among other elements, a substantially rigid shaft having a curved portion extending from a distal end of the shaft and extending along a length of the shaft to a transition point, and a straight portion extending along a length of the shaft from the transition point to a proximal end of the shaft, and that the substantially rigid shaft has an outer diameter less than 2.5 mm.

Applicant respectfully submits that the '917 patent requires a malleable shaft and as such, teaches away from combination with either the '81317 reference or the '940 patent. The Examiner has submitted that the '917 patent "finds the malleable shaft to be 'preferable' (col. 7, lines 45-48), but does not teach it to be a necessity." (page 6, lines 13-14). Applicant respectfully disagrees. For instance, the '917 patent identifies a problem that in the art, namely that "[e]xisting devices ... are not adjustable for different size patients that require various sizes of endotracheal or tracheostomy tubes." (Col. 1, lines 63-56). The '917 patent further identifies a limitation of the prior art devices stating that they "can be used with an endotracheal tube of only one length or a limited range of lengths" and that the "prior art patents described all disclose fixed length endoscopes that can only be use with endotracheal tubes of only one length or of a limited range of lengths." (Col. 2, lines 21-23, and 28-30). The '917 patent still further teaches that because of this limitation in the prior art, "[t]hese devices necessitate different versions for

the many available endotracheal tubes from pediatric to adult sizes." (Col. 2, lines 30-32). In addressing this problem in the prior art, the '917 patent teaches that it would "be beneficial to be able to use one size of endoscopic viewing system with several sizes of endotracheal tubes such as from pediatric to adult sizes." (Col. 2, lines 42-44).

In order to fix this problem identified with the prior art, the '917 patent teaches the use of a malleable sheath "so that the practitioner can bend the sheath 40 into a desired shape for a particular patient." (Col. 7, lines 45-48). The '917 patent discloses that the sheath "substantially retains the shape into which it is bent while the breathing tube is being inserted into the patient" and because of this, it "allows the viewing system 20 to be used with endotracheal tubes 80 of any length for different size patients when the viewing system is used for intubation." (Col. 7, lines 48-53). The '917 patent further explains that because "the sheath 40 may be shaped as desired, a single standard length sheath 40 may be used for any patient." (Col. 7, lines 53-55). Still further describing how the '917 patent fixes the problem identified with the prior art, the '917 patent explains that "the sheath is malleable and is made of aluminum or preferably stainless steel tubing so that it can be bent or shaped to accommodate a particular patient's anatomy." (Col. 8, lines 3-6).

The Examiner has stated that the '917 patent finds the malleable shaft to be preferable but not necessary. Applicant however respectfully submits that the problem identified in the prior, namely, that existing devices are not adjustable for different size patients and therefore necessitate different versions for the many available endotracheal tubes from pediatric to adult sizes, cannot be solved if the shaft of the endoscope is rigid. If the shaft were rigid, the physician could not bend or shape it to accommodate a particular patient's anatomy. If the physician can not shape the endoscope to the particular patient, then the viewing system cannot be used with endotracheal tubes of any length for different size patients. Further, if the shaft were rigid, a single standard length sheath cannot be used for any patient.

The '917 patent identified all of these problems with the prior art and provided a system that addressed them. The '917 patent stated that the problem in the prior art was that the devices "were not adjustable for different size patients." (Col. 1, line 64). In order to provide a system that was adjustable, the '917 patent provided a system that requires the shaft to be malleable. Applicant respectfully submits that the '917 patent does require a malleable shaft and as such the '917 patent teaches away from the combination with either the '81317 reference or the '940 patent as suggested by the Examiner.

In view of the above arguments, Applicant respectfully submits that because all of the claims of the present invention require among other elements, a substantially rigid shaft having a curved portion extending from a distal end of the shaft and extending along a length of the shaft to a transition point, and a straight portion extending along a length of the shaft from the transition point to a proximal end of the shaft, and that the substantially rigid shaft has an outer diameter less than 2.5 mm, no combination of the above-listed prior art can render the present claims obvious.

It is respectfully submitted that claims 1-9 and 11-14, all of the claims remaining in the application, are in order for allowance, and early notice to that effect is respectfully requested.

Respectfully submitted,



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